

### Remarks

Reconsideration of the captioned application as amended herewith is respectfully requested.

The Office Action rejected claims 1 – 8 under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 6,153,208 to McAtee, et al. ("McAtee") in view of United States Patent No. 6,149,926-A to Venkitaraman, et al. ("Venkitaraman"). Claims 1 - 8 are pending in the application after entry of this response.

#### The Rejection of Claims 1 – 8 Under 35 U.S.C. §103(a) based upon McAtee in view of Venkitaraman Have Been Overcome.

Claims 1-8 stand rejected under 35 U.S.C. §103(a) as being unpatentable over McAtee in view of Venkitaraman. Applicants respectfully disagree in view of the ensuing discussion.

McAtee is directed to a "substantially dry" cleansing and conditioning article containing preferably less than about 1% water. See McAtee, column 7, line 63 to column 8, line 2. As acknowledged in the Office Action, the McAtee article may include a benzalkonium chloride cationic antibacterial agent, but it "is deficient in the fact, that the articles of the invention are not alcohol-free." Because of the substantial dryness of the McAtee articles, a user is required to wet such articles with water prior to their use. See McAtee, column 3, lines 58 – 61.

Venkitaraman is directed to a cosmetic applicator containing an oil-in-water emulsion, which does not include a "latex binder" or a "cationic antibacterial agent." See Venkitaraman, column 1, lines 13 – 17. The Venkitaraman applicators may be used "anytime when water and soap are not readily accessible." See Venkitaraman, column 1, lines 25 – 28.

According to the Office Action, one skilled in the art would have known to combine the antibacterial and surfactant characteristics of the cleansing article disclosed by McAtee

with the substantially alcohol-free aspect of the cosmetic applicator disclosed by Venkitaraman. Applicants respectfully disagree for the reasons that follow.

First, neither reference discloses nor suggests the importance of having the binder "present in at least about 90% of the substrate thickness," as claimed in independent claim 1 and 7 of the present invention. As stated in Applicant's Specification on page 8, lines 15 – 18, it was "unexpectedly found that the stability of the antibacterial solution applied to the wipe product... is greatly improved when the binder penetrates greater than about 90%... of the substrate thickness." Neither reference acknowledges the existence of a stability problem with cationic antimicrobial solutions, nor offers to solve such a problem by the incorporation of a latex binder in "at least about 90% of the substrate thickness." More specifically, Venkitaraman neither discloses nor suggests the use of any binders, and both Venkitaraman and McAtee fail to disclose or suggest the importance of having a binder "present in at least about 90% of the substrate thickness."

Second, there is neither a disclosure nor a suggestion to combine McAtee with Venkitaraman. As set forth above, McAtee is directed to a substantially dry article for cleansing and conditioning, which must be combined with water upon its use. By contrast, Venkitaraman is directed to a water-impregnated applicator that may be used "when water... is not readily accessible." See Venkitaraman, column 1, lines 27 – 28.

In order for a combination of references to be properly combined to render an invention obvious, it must be obvious to one skilled in the art that their teachings can be combined. See In re Avery, 518 F.2d 1228 (CCPA 1975). Thus, there must be some teaching, inference, or suggestion in either or both of the references that would have led one of ordinary skill in the art to combine the relevant teachings of the two references. See Ex parte Levengood, 28 USPQ.2d 1300 (BPAI 1993). The mere fact that it may be possible to combine two isolated disclosures does not render the result of such combination obvious absent a logical reason of record that justifies such a combination. In re Regel, 188 USPQ 136 (CCPA 1975).

According to the Office Action, it would be proper to combine McAtee with Venkitaraman, despite the fact that the latter fails to disclose or suggest: 1) the use of a

binder, let alone a latex binder; 2) the use of a binder that "is present in at least about 90% of the substrate thickness;" or 3) the use of a cationic antibacterial agent. Applicants respectfully submit that there is neither a disclosure nor a suggestion to combine the dry articles of McAtee with the wet applicators of Venkitaraman. Rather, this proposed combination would not have been obvious to one skilled in the art because these references are directed towards substantially different types of articles.

Moreover, Applicants respectfully submit that the Office Action was extraordinarily selective in combining elements from the McAtee substantially dry, alcohol-containing cleansing and conditioning article (which, unlike the presently claimed invention, requires user wetting), and the wet, binder-free Venkitaraman cosmetic applicator (which unlike the presently claimed invention, also uses an oil-in-water emulsion and non-cationic antimicrobials.) As set forth in the case law, citation to references which merely indicate that isolated elements and/or features recited in the claims are known is not a sufficient basis for concluding that the combination of claimed elements would have been obvious. See Ex parte Hiyamizu 28 PQ2d 1300 (BPAI 1993). Such a selective combination of elements can only result from hindsight after the claimed invention was made, which is not the proper vantage point in time for deciding obviousness. See In re Carroll 202 USPQ 571 (CCPA 1979).

Thus, Applicants respectfully maintain that it was not proper for the Office Action to select only the "alcohol-free" element of Venkitaraman while it carefully ignored other elements of Venkitaraman, such as its incorporation of 1) an oil-in- water emulsion instead of an "aqueous antibacterial solution" as claimed and 2) a neutral or anionic antimicrobial agent instead of a "cationic antimicrobial agent" as claimed, as well as ignoring Venkitaraman's failure to disclose or suggest the use of a binder, let alone a latex binder.

Third, assuming *arguendo* that it was proper to combine McAtee with Venkitaraman, and to further selectively combine only certain elements of Venkitaraman with only certain elements of McAtee, Applicants respectfully submit that the resulting combination still would not result in the presently claimed invention. For example, as set forth above, the resulting combination would still not have the binder "present in at least

about 90% of the substrate thickness" as claimed in claim 1 and claim 7, which is further evidenced by the fact that neither McAtee nor Venkitaraman disclose or suggest an awareness of the stability problems associated with cationic antimicrobial solution use.

Therefore, because 1) there is neither a disclosure nor a suggestion to combine McAtee with Venkitaraman; 2) the Office Action's proposed combination resulted from improper hindsight based upon Applicants' invention; and 3) the resulting combination still does not contain all of the elements of Applicants' invention as set forth in claim 1 and claim 7, Applicants respectfully submit that the rejection of claim 1 and claim 7 under 35 USC §103 has been overcome and should be withdrawn.

Further, with respect to claim 2, Applicants respectfully submit that Venkitaraman does not disclose or suggest use of any "binder", and McAtee does not disclose or suggest the presence of binder on both a "front surface and a back surface" as claimed in claim 2. See McAtee, column 14, line 56 to column 15, line 46.

With respect to claim 3, Applicants respectfully submit that Venkitaraman does not disclose or suggest the use of "cationic antibacterial agents", let alone the particular antibacterial agent, "benzalkonium chloride" as claimed in claim 3. See Venkitaraman, column 4, lines 22 – 34.

With respect to claim 4, as above, Applicants respectfully submit that Venkitaraman does not disclose or suggest "benzalkonium chloride." Further, McAtee fails to disclose or suggest that the "effective amount of benzalkonium chloride is, based upon the total weight of the aqueous antibacterial solution, from about 0.09% to about 0.15%" as is claimed in claim 4. See McAtee, column 46, line 25 to column 47, line 25.

With respect to claim 5, Applicants respectfully submit that Venkitaraman does not disclose or suggest the use of any "binder", let alone a "polymer latex polymerized from at least one acrylic monomer" as is claimed in claim 5. McAtee also does not disclose or suggest Applicants' claimed "polymer latex polymerized from at least one acrylic monomer." See McAtee, column 14, line 56 to column 15, line 46.

With respect to claim 6, as above, Applicants respectfully submit that Venkitaraman does not disclose or suggest the use of any of "binder", let alone a "polymer latex

polymerized from at least one acrylic monomer" as is claimed in claim 6. McAtee also fails to disclose or suggest Applicants' claimed polymer latex binder "comprised of a mixture of a self-crosslinking, acrylic emulsion polymer latex binder and an acrylic emulsion polymer latex." See McAtee column 14, line 56 to column 15, line 46.

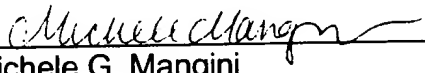
With respect to claim 8, Applicants respectfully submit that Venkitaraman fails to disclose or suggest 1) the use of "cationic antibacterial agents", let alone the particular antibacterial agent, "benzalkonium chloride" or 2) the use of a "latex binder", let alone a "polymer latex polymerized from at least one acrylic monomer". See Venkitaraman, column 4, lines 22 – 34. McAtee also fails to disclose or suggest 1) the claimed range of "from about 0.21% to about 0.22%"; or 2) a latex binder "present in at least about 90% of the substrate thickness." See McAtee, column 46, line 25 to column 47, line 25 and column 14, line 56 to column 15, line 46.

In view of the above, Applicants further respectfully submit that the rejection under 35 USC § 103 of claims 2 through 6, which depend upon independent claim 1 and contain all of its limitations therein, as well as the rejection of claim 8, which depends upon independent claim 7 and contains all of its limitations therein, also have been overcome and should be withdrawn for the reasons set forth above.

**Conclusion**

Applicants believe that the foregoing presents a full and complete response to the outstanding Office Action. An early and favorable response to this Amendment is earnestly solicited.

Respectfully submitted,

  
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